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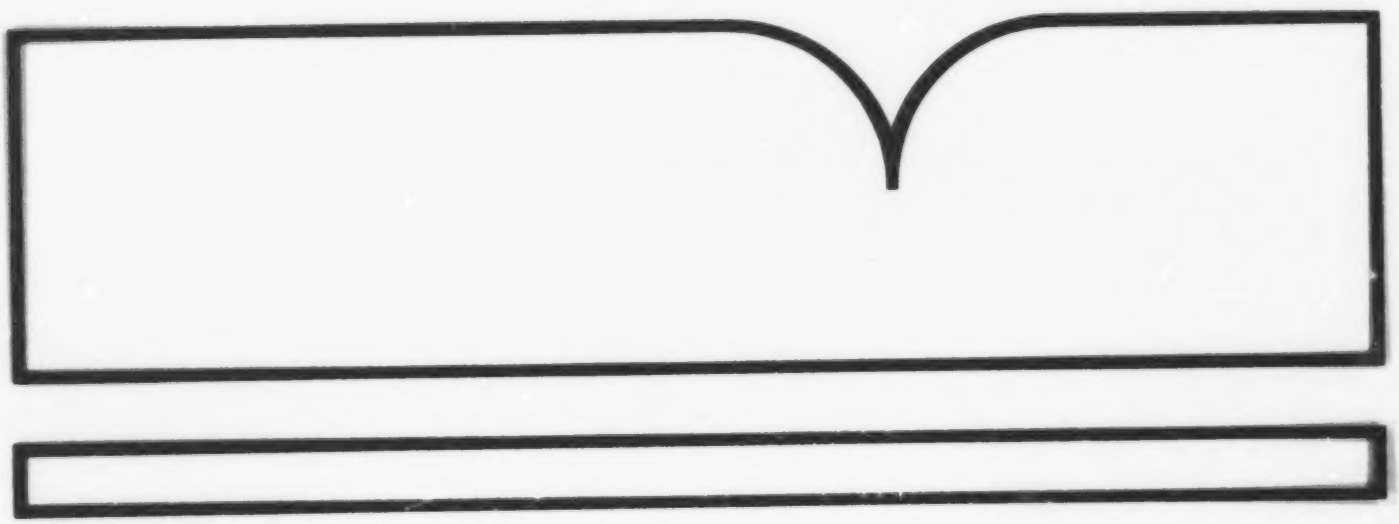
Regulation and Policy Matrices: A Guide to the Rules Governing Grants Awarded under the Construction Grants Program, Update - 1985

(U.S.) Environmental Protection Agency
Washington, DC

Sep 85



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Agency

Office of Municipal
Pollution Control (WH-547)
Washington DC 20460

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EPA

Regulation and Policy Matrices

A Guide to the Rules Governing Grants Awarded under the Construction Grants Program

Update-1985

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Update of the Regulation and Policy Matirces - A Guide to the Rules Governing Grants Awarded Under the Construction Grants Program

17. KEY WORDS AND DOCUMENT ANALYSIS

a. DESCRIPTORS	b. IDENTIFIERS/OPEN ENDED TERMS	c. COSATI Field/Group
Wastewater Treatment	Regulations	

18. DISTRIBUTION STATEMENT	19. SECURITY CLASS *(This Report)*	21. NO. OF PAGES
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

SEP 19 1985

SUBJECT: Update of the Regulation and Policy Matrices

FROM: James Hanlon, Director
Municipal Construction Division (WH-547)

TO: Holders of the Matrices

This is your copy of the 1985 update material for the Construction Grants Program "Regulation and Policy Matrices" (Matrices). As you may recall, in publishing the Matrices, we indicated that annual updates would be prepared to coincide with the publication cycle of the Code of Federal Regulations (CFR). The next printing of Title 40 of the Code will contain all regulations through June 30, 1985. Accordingly, the update of the Regulation section of the Matrices contains a listing and brief description of those Federal Register notices of construction grant regulations dealing with allowable and unallowable costs and of secondary and pretreatment regulations which were published between July 1, 1984 and June 30, 1985. For grants awarded during that period, applicable regulations would be those found in the 1984 edition of Title 40 of the CFR plus the regulations identified in the Regulation Matrix of the Matrices promulgated between July 1, 1984 and the date of the grant award.

In addition, the Handbook of Procedures Matrix has been updated to reflect the changes published in Transmittal Memorandum 85-1 and the Board of Assistance Appeals Decisions (BAA) Listing and Subject Index have also been brought up to date.

The enclosed pages have been three-hole-punched so that they can be inserted into the revised Matrices which was published in April 1985. It is our plan to continue to publish and distribute these updates to holders of the Matrices annually, each September.

Date Published in F.R.	Affected Part and Sections	Effective Date	Comments
	(b) Plan of operation		§A.1.i. and j. Plan of operation, start-up, and training services are allowable costs;
	(c) Legal defense		§A.2.c. Legal and administrative costs of defense against claims are unallowable unless particular requirements are met:
	(d) Mitigation		§B.2.a. Mitigation costs for aesthetic problems are generally unallowable;
	(e) Land		§D.2.b. Cost of land in excess of just compensation is unallowable;
	(f) Replacement parts		§E.1.g. Replacement part is allowable if it is a critical or major systems component which involves long lead-time procurement;
	(g) Additions		§H.1.d. If additions are demonstrated not to be caused by the grantee's mismanagement or the improper action of others (e.g., the grantee's engineers or contractors), the costs are allowable under limited conditions; and
	(h) Corrective action report		§H.2.1. Cost of a corrective action report is unallowable.
2-17-84	Part 35 (Notice) Preamble FR p. 6254	2-17-84	Notice sets forth Agency policy that CG applicants demonstrate their financial and management capability to construct, operate and maintain (including equipment replacement) a wastewater treatment sysem.
2-17-84	Part 35 (Proposed rule for new section, 35.2205) Preamble FR p. 6113	90 days after publication as a final rule	This rule proposes to specifiy that the maximum increase to a grant will be five percent of the initial allowable project cost.

1983 CONTINUED

Date Published in F.R.	Affected Part and Sections	Effective Date	Comments
4-11-84	Class deviation from 40 CFR §35.935-9 Preamble FR p. 14341	3-30-84	§35.935-9 requires Regional Administrators (RAs) to annul or terminate grants for wastewater treatment construction projects which grantees do not begin constructing within 12 months of a grant. RAs are permitted to approve a six-month extension when justified by the grantee in writing. This deviation waives the requirements that RAs annual or terminate those projects which violated §35.935-9. However, RAs (or delegated States) shall review each project subject to this deviation to determine whether any part of the delay was due to grantee mismanagement and disallow any cost increases attributable to unjustified delays.
5-17-84	Part 403 - Grant Pretreatment Regulations 40 CFR §403.6(e) Final Preamble FR p. 21024 Amendment FR p. 21037-8	7-2-84	Amendment permitting reclassification of non-contact cooling water flows contaminated with significant quantities of pollutants from "dilute" to "unregulated" for purposes of the combined waste stream formula contained in 40 CFR §403.6(e).
5-21-84	Policy for Review of Advance Treatment (AT) Projects (Notice) Preamble FR p. 21462	5-21-84	This notice covers program policy and technical procedures for Agency review of advanced treatment (AT) projects proposed for funding under the construction grants program. AT projects are treatment projects designed to meet effluent requirements more stringent than secondary treatment. Approval for AT projects will be given only if it is determined that AT is required and will definitely result in significant water quality and public health improvements.

1985 CONTINUED

Date Published in F.R.	Affected Part and Sections	Effective Date	Comments
6-12-84	Policy on Municipal Sludge Management Preamble FR p. 24358	6-12-84	This policy establishes the Federal regulatory rule on sludge management in relationship to State and local governments. EPA will actively promote those municipal sludge management practices that provide for the beneficial use of sludge while maintaining or improving environmental quality and protecting public health.

CODE OF FEDERAL REGULATIONS

1984

Date Published in F.R.	Affected Part and Sections	Effective Date	Comments
7-10-84	Part 403 - General Pretreatment Regulations for Existing and New Sources Final Preamble FR p. 28058	7-10-84	This final rule promulgates a revised definition of "new source" as applied to indirect dischargers under the CWA. The revised definition is made pursuant to an order of a federal appellate court (see above, section dated February 10, 1984). "New source" is now defined as any source commencing construction after the proposal of an applicable pretreatment standard. This definition is used for determining whether a source is subject to the pretreatment standards for new sources or for existing sources.
8-3-84 (P) 9-28-82	Part 403 - General Pretreatment Regulations for Existing and New Sources; Removal Credits Final Preamble FR p. 13212	9-17-84	Section 307(b)(1) of the CWA allows a POTW to provide industrial users with a "credit" (in the form of reduced pretreatment requirements) for removal of pollutants by the POTW. Industrial users which qualify for such a credit are allowed to discharge larger quantities of regulated pollutants to the POTW than would otherwise be allowed by the applicable categorical pretreatment standard. This rule promulgates a revised removal credit regulation. The proposed rule had provided for "national removal rates." This would have permitted a qualified POTW to rely on national removal rates developed by EPA, rather than on rates established through the collection of data by the POTW to demonstrate its actual removal performance. However, based on the statute and a recent court decision, EPA believes it lacks legal authority to establish national removal credits. The final rule authorizes POTWs to apply for removal credits based upon case-by-case demonstrations. Once a POTW is authorized to grant removal credits, the POTW has complete discretion in deciding whether to award removal credits.

Date Published in F.R.	Affected Part and Sections	Effective Date	Comments
			The five prerequisites for obtaining authorization to give removal credits are that the POTW must (1) apply for and receive authorization; (2) demonstrate consistent removal; (3) have an approved local pretreatment program or qualify for the exception to this requirement; (4) meet all applicable sludge requirements (if the POTW is eligible for grant funding, EPA will not pay for additional sludge management costs resulting from giving removal credits); and (5) continue to comply with all its NPDES permit limits and conditions. Removal credits will generally remain set for the term of the POTW's NPDES permit. One difference between the proposed and final rule is with respect to procedures for modifying or withdrawing removal credits when circumstances arise that warrant a change. The final rule provides for notice and comment before removal credits are modified or a POTW's authority to grant removal credit is withdrawn.
9-20-84 (P) 11-16-83	Part 133 - Secondary Treatment Regulation Final Preamble FR p. 36986 Major Subjects Described 1. Permitting Authority	11-5-84	Some changes were made to the regulation as originally proposed: The proposal provided that a "registered engineer" would evaluate the design capability of a new treatment process in establishing effluent limitations. The final rule deletes this term and provides that the "permitting authority" shall determine the appropriate effluent limitation.

Date Published in F.R.	Affected Part and Sections	Effective Date	Comments
	2. Level of Treatment		The final rule states that the permitting authority may not set an effluent limitation for an existing or new facility less stringent than allowed in §§133.105 ("Treatment equivalent to secondary treatment"). Also, permitting authorities may require effluent limitations more stringent than the limitations allowed in §133.105 if the permitting authorities determine more stringent limitations are achievable through proper design and/or proper operation and maintenance.
	3. Industrial wastes		The final rule allows an upward adjustment of the 30-day BOD_5 and SS concentration limitations where POTWs receive industrial wastes for which direct discharge standards are less stringent than the secondary treatment requirements. This provision for adjustment has now been made applicable to TFs and WSPs providing treatment equivalent to secondary treatment.
	4. Oxygen demand		Use of the $CBOD_5$ parameter is allowed for secondary treatment including TFs and WSPs as facilities providing treatment equivalent to secondary treatment.
	5. Alternative State Requirement		The final rule requires EPA approval of an alternative state requirement (ASR). ASR is an adjustment to minimum levels of effluent quality for TFs and WSPs.
10-2-84	Part 30 - General Regulations for Assistance Programs; Corrections Final Preamble FR p. 38944	10-2-84	§30.410(d) is corrected to read that the Federal Acquisition Regulation, 48 CFR Subparts 31.1 and 31.2, are applicable to profit making organizations.

Date Published in F.R.	Affected Part and Sections	Effective Date	Comments
10-16-84	Part 133 - Secondary Treatment Regulation; Correction Final	10-16-84	Corrects typographical errors made in final regulations published September 20, 1984.
1-11-85	Part 35 and 130 - Water Quality Planning and Management Final	2-11-85	Water quality planning and management regulations were simplified in order to provide States and local governments with increased flexibility to operate their programs and to implement individually effective water quality programs focused on priority issues and areas. Water quality agencies must properly manage and account for Federal funds and document improvements in water quality.
1-29-85	Protest Appeals of Recipients Procurement Actions Under Federal Assistance Agreements		Index of EPA Bid Protests. Appeal determinations issued by RA in 1983.
2-8-85	Part 30 - General Regulation for Assistance Programs Proposed	N/A	Revision to rules for collecting interest, processing and handling (collection), and timing of imposition of penalty charges on recipients' debts under EPA assistance agreements. Interest will accrue from date of DDO's decision even if review of that decision is requested.
5-9-85	Part 403 Appendix D Proposed Preamble FR p. 19664	N/A	This proposed rule revises Appendix D (a list of waste streams considered dilute - i.e., having no more than trace or non detectable amounts of pollutants of concern) to update and correct list and to eliminate errors. Some subcategories had been erroneously listed or omitted.

Date Published in F.R.	Affected Part and Sections	Effective Date	Comments
5-28-85 (P) 5-20-85	Part 4 - Uniform Relocation Assistance and Real Property Acquisition Proposed Common Preamble FR p. 21712-21717 EPA Specific Preamble FR p. 21726-21727 Common Rule FR p. 21732 -21749	N/A	This proposed rule was developed to eliminate the present inconsistencies among comparable regulations of various Federal agencies in the treatment of persons whose property is acquired for a Federal or a federally assisted project and persons displaced for such a project and to treat all such persons equally. This proposed regulation would be applicable to both direct Federal programs and projects and to federally assisted programs and projects undertaken by State and local government agencies. It would amend current Uniform Act regulations and would implement the Uniform Act for all affected programs within the executive branch except for the Department of Transportation (DOT). DOT published a final rule implementing the Uniform Act on March 5, 1985, at 50 FR 9855. In amending EPA's Uniform Act rule in Part 4, the proposed rule (a) significantly expands the criteria for appraisals of real property under EPA and EPA-assisted programs; (b) adds a requirement that the acquiring agency have an appraisal review process; (c) permits the full or partial donation of real property to an acquiring agency, and allows owners to waive rights to appraisals as long as the donor is informed of his right to just compsensation; (d) provides for a prorated share of all relocation payments in multiple occupancy situations, except when the displacing agency determines that more than one household had been maintained; (e) modifies EPA's current requirement that a partial acquisition of a farm operation leave the farm operation with an uneconomic remnant in order for a fixed payment to be payable. The

Date Published in F.R.	Affected Part and Sections	Effective Date	Comments
			proposed rule only requires that in such cases, the partial acquisition caused a substantial change in the nature of the farm operation; (f) provides that only the market method be used in determining the cost of a comparable replacement dwelling; (g) deletes the requirement that the displacing agency, at the request of a displaced person, provide a certificate concerning eligiblity for a replacement housing payment; (h) deletes the provision of EPA's current regulation requiring that payments and other costs under the Uniform Act be shared in the same manner as other project costs; (i) deletes the provision that EPA may advance to a State agency the EPA share of the cost of Uniform Act payments if it is determined to be necessary for the expenditious completion of a program or a project; (j) allows for simplified appraisal procedures for cases as identified by the agency; (k) established an administrative settlement procedure where negotiated purchase is unsuccessful; (l) requires updating of purchase offers based on information provided by landowner, change in property characteristics or significant delay; (m) requires agency to establish minimum qualifications for appraisers; and, (n) clarifies responsibility for paying damages to portions of property not acquired for the project.

Date Published in F.R.	Affected Part and Sections	Effective Date	Comments
6-3-85 (F) 9-20-84 (P) 9-20-84*	Part 133 - Secondary Treatment Regulations (*Notice soliciting comment on percent removal (PR) requirement of secondary treatment regulations - 49 FR 37010-14). Final	7-17-85	- Requires a thirty (30) day average of not less than 85 PR for BOD_5, $CBOD_5$ and SS for conventional secondary treatment processes. - Requires a thirty (30) day average of not less than 65 PR for BOD_5, $CBOD_5$ and SS (except SS limits for waste stabilization ponds) for treatment processes equivalent to secondary treatment. - Provides special consideration for lowering the PR requirements or for substituting a mass limit for PR for certain POTW's that cannot meet the minimum PR due to less concentrated influent conditions. - Treatment plans can apply for a permit adjustment in PR under this special consideration only if: (1) The treatment plant is consistently meeting or will consistently meet (for new plant) its other permit effluent concentration limitations, but its PR requirements cannot be met due to less concentrated influent; (2) to meet the PR requirement would require significantly more stringent effluent limitations than would otherwise be required by the concentration based standard; and (3) the less concentrated influent is not the result of "excessive" I/I.

Date Published in F.R.	Affected Part and Sections	Effective Date	Comments
			- Under this final rule, NPDES permitting authorities would be allowed to modify the PR requirement in existing secondary treatment permits on a case-by-case basis, based on the removal capability of the treatment plant, influent wastewater concentration and the I/I situation. The concentration limits in the permit would remain unchanged.
6-19-85	Part 403 - General Pretreatment Regulations for Existing and New Sources Proposed Preamble FR p. 25526-9 Defintions FR p. 225529	N/A	This regualtion proposes new definitions for the terms "interference" and "pass through "to replace those which were suspended in a court ruling on 9/30/83 and, subsequently, in regulations of 2/10/84.
6-25-85 (P) 1-7-83	Part 6 - Procedures and Requirements Implementing the National Environmental Policy Act for the Municipal Wastewater Treatment Construction Grants Program (Subpart E) and Related Sections Interim	6-25-85	The procedural amendments accommodate recent changes in EPA's regulations for the c.g. program (40 CFR Part 35) which have been modified to incorporate the Amendments of 1981 (Pub.L. 97-117). The modifications in the grant program change the process that recipients of EPA grants follow in the planning and building of wastewater treatment facilities. Several amendments to Subpart E and related sections, though substantive, are minor in nature and streamline the process and criteria for undertaking an environmental review and preparing an EIS. The reg. also revises the reference to "Office of Federal Activities" to "Office of External Affairs". More substantive changes were made to the environmental review process including the partitioning of the review process and public involvement requirements.

Allowable and Unallowable Costs	1st Edit. 7/75	TM 76-1* 8/76	TM 77-1 1/77	TM 78-1 2/78	2nd Edit. 10/79	3rd** Edit. 10/84	TM 85-1 7/85	
Acquisition of Privately or Publicly Constructed Waste Treatment Facilities	X				X		X	
Administration Building						X		
AE Services						X		
Aesthetics						X		
Assistance with State and Federal Regulations	X				X			
Bid Bond Forfeiture	X	X			X	X		
Biological "Seeding"	X				X			
Bond Costs	X				X			
Bonus Payments						X		
Building Maintenance Equipment						X		
Certificate as to Title to Project Site	X				X			
Change Orders						X		
Claims (defense)						X		
Claims (settlements)						X		
Collection System Maintenance Equipment	X				X	X		
Computers						X		
Crossover Sewers					X			
Defects in Plans and Drawings (Subagreements for Correction of)						X		
Delays						X		
Demolition of Existing Structures	X				X	X		
Federal Facilities	X				X			
Federal Statutory Procedures(Compliance with)						X		
Field Surveys to Identify Cultural Resources	X				X	X		
Financial Reports and Studies	X				X			
First Year of Operation (A/E)						X		
Fringe Benefits	X				X			
Furnishings (incl. Draperies, Furniture, and Office Equipment)	X				X	X		

Handbook (Continued)

Allowable and Unallowable Costs	1st Edit. 7/75	TM 76-1* 8/76	TM 77-1 1/77	TM 78-1 2/78	2nd Edit. 10/79	3rd** Edit. 10/84	TM 85-1 7/85	
Grantee Employee Salaries and Benefits						X		
Grantee Employees Transportation						X		
Grantee Training Workshops	X				X	X		
Groundwater Monitoring Facilities	X				X	X		
Individual Systems					X			
Industrial (Planning) (Use of Facilities)	X				X			
Infiltration/Inflow						X		
Inspection	X				X	X		
Labor Charges and Related Costs	X				X			
Laboratory Equipment, Chemicals and Supplies	X				X	X		
Liquidated Damages	X				X	X		
MBE/WBE Liaison Services						X		
Mobile Equipment	X				X	X		
New Habitation Capacity or Establishments on Environmentally Sensitive Land						X		
Plan of Operation (and O&M manual)						X		
Pretreatment Program					X	X		
Procurement						X		
Professional Liability Insurance						X		
Protests (Procurement) (Legal and Engineering Services)						X		
Public Liaison Services	X				X	X		
Public Participation (On-Site Visits)	X				X			
Rate Studies	X				X			
Redesign/Replanning Costs Resulting from Changes in Federal Requirements	X				X			
Replacement Parts	X				X			
Restoration of Streets and Rights-of-Way	X				X	X		
Royalties and Patents					X	X		
Safety Equipment	X				X			

Handbook (Continued)

Allowable and Unallowable Costs	1st Edit. 7/75	TM 76-1* 8/76	TM 77-1 1/77	TM 78-1 2/78	2nd Edit. 10/79	3rd Edit. 10/84	TM 85-1 7/85	
Services (Non-engineering; Required during Construction by State or Local Law)	X				X	X		
Shop Equipment	X				X	X		
Site Acquisition vs. Site Preparation Costs	X	X	X		X		X	
Site Screening						X		
Small and Onsite Systems						X		
Special Assessment Districts (Establishment of)	X			X	X			
Start-up Services			X		X	X		
Subagreements (building)						X		
Tools	X			X	X			
Transporation of Liquid or Dewatered Wastes						X		
Travel Costs	X				X	X		
Uniform Relocation Assistance and Real Property Acquisition Policies						X	X	
Utilities	X				X		X	

*TM 76-1 contains a revision to the general "Allowability Determinations" and reads, "The cost items listed below are applicable to both PL 84-660 and PL 92-500 projects. In making eligibility determinations, consideration should be given to commitments previously made to grantees in the absence of prior National policy, pertinent statutes or regulations."

**Only those allowable/unallowable costs which are expanded in the Handbook are listed here. "Appendix A" costs (from 2/17/84 regs), which are repeated verbatim in the Handbook but not annotated, have been omitted.

Docket No.	Assistance Appeal Case Name	Date of Decision
83-59	Arlington County, Virgina	11-30-84
83-122	City of Itasca, Texas	11-30-84
83-129	Freeport Sewer District, Maine (Reconsideration)	12-06-84
83-74	City of Columbus, Mississippi	12-18-84
82-99	City of Baytown, Texas	12-19-84
83-106	Bradford Sanitary Authority, Pennsylvania	12-19-84
80-89	Upper Allegheny Joint Sanitary Authority, Pennsylvania	12-26-84
82-65	City of Coppell, Texas	12-28-84
83-39	Pound, Virginia	1-23-85
83-72	City of Lawrence, Kansas	1-23-85
83-135	New Orleans, Louisiana	1-23-85
83-124	Northeast Ohio Regional Sewer District	1-24-85
83-78	Princeton Sanitary Board, West Virginia	1-25-85
83-41	Accident, Maryland	1-29-85
82-106	Fulton County, Georgia	1-30-85
83-58	City of Medford, Wisconsin	1-31-85
83-75	City of Fort Wayne, Indiana	2-06-85
81-117	City of Port Towsend, Oregon	2-26-85
83-52	City of Greensboro, North Carolina	2-27-85
83-121	City of Ventura, California	3-01-85
78-07	Milwaukee Metropolitan Sewerage District	3-07-85
83-61/83-62	Cumberland-Franklin Joint Municipal Authority and Hamilton Township Municipal Authority	3-08-85

Docket No.	Assistance Appeals Case Name	Date of Decision
83-134	Saraland, Alabama	3-22-85
83-108	City of Clifton Forge, Virginia	3-25-85
83-127	Secaucus Municipal Utilities Authority	3-28-85
81-113	Metropolitan Waste Control Commission, St. Paul, Minnesota	3-28-85
82-05	Detroit Water and Sewerage Department, Detroit, Michigan	4-26-85
83-46	Glen Rogers Public Service District, West Virginia	5-01-85
83-138	City and County of San Francisco, California	5-10-85
82-73	Saratoga County Sewer District, New York	5-17-85
83-14	Port Huron Township, Michigan	5-21-85
83-50	City of Bend, Oregon	5-31-85
82-56/82-58	City of Jackson, Mississippi	6-05-85
80-89	Upper Allegheny Joint Sanitary Authority, Pennsylvania	6-25-85
83-44	City of Attleboro, Massachusetts	6-28-85
83-130	City of Attleboro, Massachusetts	6-28-85

D R A F T

Assistance Appeals Subject Index*

Current as of July 1, 1985

Allowability of Costs for Grant Funding

Accounting Method

76-16† 79-08† 79-34† 80-73†† 82-61†

Allocation

78-04† 79-09† 79-18† †† 79-29† 79-43† †† 80-01†
80-13† †† 80-18†† 80-26†† 80-31† 80-56†† 80-60††
80-61†† 80-64†† 80-69†† 80-85† 81-03† 81-57†
82-74††† 82-79† 82-131† 83-99† 83-138†

Direct Costs

79-09† 79-29† 80-01† 80-09†† 80-12†† 80-17††
80-25†† 80-28† 80-57†† 80-65†† 80-70†† 80-81†
80-102†† 81-17†† 81-18 81-58†† 81-71† 81-89†
81-92† 82-12† 82-122† 83-45† 83-129†††

Documentation

76-16† 77-06† 77-22† 79-09† 79-29† 79-36†
79-43† †† 80-22† 80-28† 80-29†† 80-41† 80-51†
80-54† 80-64†† 80-72†† 80-77† 80-81† 80-97†
80-101† 80-114†† 81-02† 81-03† 81-42† 81-47††
81-62††† 81-63†† 81-72†† 81-73†† 81-74† †† 81-77†
81-79†† 81-84† 81-89† 81-92† 81-93†† 81-97†
81-98† 81-102†† 81-112† 81-113† 82-10† 82-12†
82-15†† 82-19† 82-20† 82-28††† 82-29† 82-37††
82-44† 82-47 82-48† 82-53† 82-79† 82-86††
82-92 82-93† 82-96† 82-97† 82-113† 82-119†
82-122† 82-90†† 82-125††† 83-39† 83-45† 83-58†
83-60† 83-74† 83-75† 83-87† 83-127† 83-138†

Federal Cost Principles

75-23† 80-13† †† 80-54† 80-76† 80-83†† 81-89†
82-61†

Force Account

79-18† †† 80-09†† 80-10†† 80-13† †† 80-36†† 80-49††
80-55†† 80-57†† 80-64†† 80-94†† 80-101† 80-113†
81-06† 81-31†† 81-43† 81-74† †† 81-77† 81-86††
81-99† 81-109† 82-44† 82-54† 82-73 83-71
83-75† 83-113†

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* Key: Pending appeals are designated by docket numbers without symbols. Decisions and other determinations of the Board of Assistance Appeals are designated by docket numbers with the following symbols:

† Decided Appeal
†† Ruling on Procedural/Jurisdictional Motion or Order
††† Reconsidered Appeal

Fringe Benefits

77-22† 79-08† 79-09† 79-34† 80-54† 80-85†
80-113† 81-21† 81-79†† 82-15†† 82-73 82-79†
82-86††

Incurred After Completion Date

79-43† †† 80-54† 80-62†† 80-94†† 80-101† 80-109†
81-23† 81-26†† 81-54† 81-57† 81-89† 81-107†
81-109† 82-06† 82-77† 82-99† 83-106† 82-131†
83-33† 83-41† 83-45† 83-60† 83-74† 83-78†
83-134† 83-141†

Incurred Before Grant Award

75-17† 75-36† 76-01† †9-08† 79-10† 79-43† ††
80-39† †† 80-62†† 80-113† 81-20†† 81-78† 81-79††
82-65†

Indirect Costs

General Municipal Administrative Expenses

78-14† 78-17† 78-19† 79-08† 79-43† †† 80-51†
80-54† 80-79† 80-80† 80-85† 80-106† 81-03†
81-23† 81-35† 81-36† 81-67† 81-84† 81-89†
82-28††† 82-32†† 82-37†† 82-53† 82-73 82-97†
82-103†† 82-106† 82-125††† 83-05††† 83-74† 83-97†
83-122† 83-125 83-138†

Generally

78-12†† 79-04†† 80-26†† 80-27†† 80-30†† 80-65††
80-113† 81-03† 81-06† 81-08†† 81-38† 81-40††
81-43† 81-74† †† 81-89† 82-11†† 82-12† 82-94†
83-138

Indirect Cost Rate

80-70†† 80-80† 81-03† 81-36† 81-76†† 81-107†
82-64† 83-75†

Interest Against the Government

80-50†† 80-54† 81-37† 81-42† 82-06† 82-133† ††
83-112†

Outside Scope of the Project

77-13† 80-51† 80-79† 80-80† 81-54† 81-89†
81-99† 81-115†† 82-17† 83-108†

Overhead

80-07† 80-17†† 80-52† 80-81† 81-03† 81-21†
81-97† 82-56 82-61† 83-52† 83-97†

Profit

80-07† 80-30†† 80-65†† 80-81† 81-21† 81-36†
81-49† 82-64† 82-93† 83-52†

Reasonableness

79-18† †† 79-36† 79-43† †† 80-01† 80-07† 80-13† ††
80-23† 80-39† †† 80-52† 80-54† 80-63† 80-76†
80-97† 81-02† 81-03† 81-49† 81-77† 81-89†
81-98† 82-23† 82-79† 82-96† 82-99† 82-119†
83-19† 83-58† 83-59† 83-72† 83-74† 83-78†
83-89† 83-91† 83-108† 83-134† 83-138†

Audits

Access to Records

78-06†

Record Retention

77-06† 78-06† 79-15† 79-18† †† 79-29† 79-36†
80-01† 80-13† †† 80-22† 80-23† 80-28† 80-54†
80-97† 81-03† 81-38† 81-62††† 81-77† 81-81††
81-89† 81-92† 81-98† 82-20† 82-46†† 82-79†
82-96† 83-87†

Board of Assistance Appeals

Burden of Proof

75-16† 75-38† 76-20† 77-21† †† 78-14†† 78-15††
78-19†† 78-20†† 79-09† 79-18† †† 79-25† 79-36†
80-01† 80-07† 80-13† †† 80-18†† 80-22† 80-23†
80-26†† 80-39† †† 80-52† 80-54† 80-55†† 80-56††
80-60†† 80-61†† 80-64†† 80-69†† 80-80† 80-85†
80-116†† 81-02† 81-21† 81-23† 81-35† 81-36†
81-62††† 81-66† 81-74† †† 81-98† 81-107† 82-19†
82-24† 82-26† 82-28††† 82-53† 82-79† 82-86††
82-99† 82-105† 82-106† 82-125††† 83-05††† 83-09††
83-33† 83-39† 83-45† 83-60† 83-74† 83-75†
83-91† 83-97† 83-99† 83-106† ††83-112† 83-124†
83-138†

Cost of Appeal

80-54† 80-80† 80-97† 81-36†

Issues on Appeal

80-28† 81-79†† 81-89† 82-65† 83-106† ††83-122†

Jurisdiction

Bid Protests

75-37† 79-42†† 82-03†

Deviations from Regulations

77-13† 78-01† 79-48†† 80-22† 80-40††
80-79† 80-110†† 81-54† 81-77† 82-110†

Equitable Powers
75-07† 79-49† 80-22† 81-77† 82-03† 82-26†
83-39†

Final Disputes Decision
77-21† †† 79-18† †† 79-48†† 80-13† †† 80-53†† 80-79†
80-85† 80-97† 80-113† 81-36† 81-74† †† 81-79††
81-89† 81-96† 81-103†† 81-108† 81-113† 82-02††
82-16†† 82-28††† 82-60† 82-125††† 83-05††† 83-106† ††
83-126†† 83-131†† 83-132†† 83-133†† 83-137†† 83-139††

Generally
78-14†† 78-19† 79-48†† 79-49† 80-01† 80-18††
80-22† 80-26†† 80-55†† 80-56†† 80-60†† 80-61††
80-64†† 80-69†† 80-80† 80-105† 80-113† 81-33†††
81-62††† 81-79†† 81-96† 82-26† 82-65† 83-45†
83-133†† 83-138†

Notice of Appeal
78-01† 78-23†† 79-18† †† 79-25† 80-13† †† 83-05†††

Parties to Appeal
79-38†† 80-80† 80-103†† 82-61†

Reconsideration
74-08††† 74-09††† 75-05††† 75-06††† 79-36† 80-18††
80-26†† 80-39† †† 80-55†† 80-56†† 80-60†† 80-61††
80-64†† 80-69†† 81-23† 81-33††† 81-74† †† 82-37††
82-57† 82-74††† 82-122† 83-129†††

Standard of Review
78-07† 79-49† 80-01† 80-39† †† 81-57† 81-66†
81-115†† 82-26† 82-30† 82-74††† 82-79† 82-96†
83-09†† 83-61† 83-62†

Procedures

Deadlines
74-13†† 76-21†† 83-106† ††83-129†††

Dismissal
74-13†† 81-80†† 83-05†††

Generally
80-85† 80-110†† 81-16† 82-23† 83-05†††

Panel Appointment
80-89† †† 80-98††

Clean Air Act
77-06† 78-06† 79-09† 79-29† 80-28† 80-77† 81-38†
81-62††† 81-79††

Clean Water Act

Wastewater Treatment Works Construction Grants

Abandonment of Treatment Works

81-02†

Acquisitions

Land

76-01† 77-20† 80-01† 80-31† 80-38††
80-54† 80-85† 80-97† 81-02† 81-42†
81-55†† 81-67† 81-68†† 82-19† 82-23†
82-74††† 83-121†

Treatment Works

74-08††† 74-09††† 75-05† †† 75-06† †† 76-01†
76-18† 78-26† 81-19† 81-119††

Additions to Treatment Works

75-01† 75-25† 78-26† 80-76† 80-117†† 81-35†
81-58†† 82-24† 82-66††

Advanced Wastewater Treatment

78-07† 81-96†

Alternative Technology

83-121†

Applicable Regulations

81-62††† 81-117† 82-47 82-81 82-92 82-110†
83-45† 83-52† 83-59† 83-72† 83-73† 83-106† ††
83-110† 83-121†

Architect/Engineering Services

79-10† 79-15† 79-18† †† 79-33† 79-43† †† 79-47†
80-01† 80-04†† 80-07† 80-13† †† 80-14†† 80-22†
80-38†† 80-39† †† 80-52† 80-63† 80-64†† 80-72††
80-79† 80-80† 80-85† 80-89† †† 80-94†† 80-104††
80-110†† 81-05†† 81-06† 81-20†† 81-21† 81-22†
81-31†† 81-32†† 81-36† 81-43† 81-49† 81-58††
81-77† 81-80†† 81-97† 81-98† 82-17† 82-20†
82-37†† 82-49†† 82-53† 82-56 82-57† 82-65†
82-77† 82-80† 82-86†† 82-90†† 82-94† 82-96†
82-97† 82-106† 82-113† 83-11† 83-33† 83-35††
83-39† 83-41† 83-45† 83-46† 83-50 83-58†
83-59† 83-60† 83-67† 83-72† 83-74† 83-78†
83-87† 83-97† 83-108† 83-113† 83-122† 83-127†
83-134† 83-138† 83-141†

Bond Costs

74-13†† 79-36† 80-01† 80-09†† 80-54† 81-32††
81-86†† 82-19†

Collectors and Interceptors

74-12† 75-09† 75-10† 75-11† 75-12† 75-13†
75-14† 75-15† 75-16† 75-17† 75-21† 75-39†
76-20† 77-02† 77-17†† 77-18† 78-12†† 79-25†
79-49† 80-22† 80-105† 81-04† 81-98† 82-55†
83-05††† 83-06†

Cost Effectiveness

75-01† 75-05† †† 79-33† 79-43† †† 80-22† 81-02†
81-19† 81-106† 82-74††† 83-05††† 83-12†

Crossover Sewers

77-09†† 80-54†

Duplicative Costs

77-22† 79-33† 79-34† 79-38†† 80-07† 80-54†
81-02† 81-58†† 81-74† †† 82-19† 82-28††† 82-79†
82-105† 82-125††† 83-35†† 83-43†

Eligibility of Applicant

75-07† 78-26† 83-05†††

Industrial Cost Recovery

78-07† 79-49†

Industrial Sources

75-30† 79-49† 81-99†

Initiation of Construction

74-07† 75-38† 77-15†† 78-26† 81-114††

Innovative Technology

82-110†

Landscaping

81-32†† 81-34†† 81-101††

Legal Fees

Claim Defense

82-05† 82-26† 83-44 83-130 83-131††

Claim Prosecution

78-14†† 78-19† 83-05††† 83-93

Equal Access to Justice Act

80-80†

Generally

79-36† 80-01† 80-04†† 80-54† 80-80† 80-97†
80-104†† 81-32†† 81-36† 81-42† 81-95†† 81-98†
82-05 82-53† 82-77† 82-80† 82-119† 83-05†††
83-39†

Municipality
75-03†

Operation and Maintenance
79-38†† 80-26†† 81-21† 81-89† 81-112† 82-17†
82-103†† 83-45† 83-109† 83-112† 83-129†††

Plans and Specifications
80-04†† 80-63† 80-64†† 80-80† 81-94††

Pollution Control Need
75-11† 80-22† 81-50†† 81-66† 81-69† 81-106†
82-17† 82-24†

Project Inspection
78-06† 79-36† 80-01† 80-26†† 80-109† 81-06†
81-23† 81-26†† 81-32†† 81-43† 81-44†† 81-89†
81-98† 81-106† 81-107† 81-109† 82-20† 82-57†
82-77† 82-99† 82-106† 82-113† 82-131† 83-33†
83-39† 83-41† 83-43† 83-45† 83-60† 83-74†
83-78† 83-108† 83-134† 83-141†

Redesign Costs
79-43† †† 80-38†† 80-80† 81-33††† 82-94† 83-12†
83-73† 83-74† 83-108† 83-112† 83-140†

Regionalization
74-08††† 74-09††† 75-05† †† 76-17†† 77-19†† 78-08††
78-14†† 78-15†† 78-19† 78-20†† 81-84†

Reimbursement for Pre-Award Costs
74-07† 74-13†† 75-25† 76-18† 77-15†† 80-39† ††

Replacement of Treatment Works
77-02† 79-38†† 79-49† 82-110† 83-135†

Sewer Use Ordinance
80-54† 80-79† 81-112†

States

Approval
75-01† 80-89† 82-66†† 83-135†

Certification
80-89† †† 81-54† 82-65† 83-61† 83-62†

Delegation to State Agencies
75-03† 80-79† 81-54† 82-17† 82-74††† 82-118†
83-126† 83-137††

Priority List
80-89† †† 81-19†

Street Repair
77-21† †† 81-47†† 81-115†† 83-43† 83-61† 83-62†
83-137††

User Charge System
76-04† 78-07† 80-95†† 80-116†† 83-39† 83-112†

Estoppel
74-07† 75-25† 75-37† 78-23†† 79-12† 79-18† ††
79-34† 79-36† 79-47† 79-49† 80-07† 80-13† ††
80-22† 80-50†† 80-52† 80-54† 80-81† 80-97†
81-03† 81-33††† 81-37† 81-50†† 81-54† 81-56
81-62††† 81-66† 81-69† 81-77† 81-89† 81-98†
81-112† 81-114†† 82-06† 82-19† 82-26† 82-47
82-61† 82-64† 82-74††† 82-92 82-133† †† 83-127†
83-129††† 83-135†

Grant Administration

Amendments
77-13† 80-03† 80-89† †† 80-116†† 81-69† 81-114††
83-135†

Annulment
81-106†

Breach
81-16† 81-114††

Characterization

Contract
76-02† 80-105† 81-114†† 83-59† 83-121†

Cooperative Agreement

Trust
79-18† †† 80-13† †† 80-23† 82-53† 83-09††
83-39† 83-74† 83-112†

Conditions
81-16† 81-58†† 83-127†

Contingency Funds
83-127† 83-135†

De-Obligation of Grant Funds
81-105††

In-Kind Contributions
81-27††

Matching Funds
81-16† 81-65††

Project Changes

Generally
77-13† 79-43† †† 80-03† 80-54† 80-105† 81-22†
81-23† 81-54† 81-107† 82-23†

Grant Amount

Decrease
81-103††

Increase
78-14†† 78-19† 78-17† 79-36† 80-79† 80-89† ††
80-116†† 81-23† 81-54† 81-107† 81-112† 82-66††
82-119† 82-131† 83-110† 83-135†

Prior Approval
78-14†† 78-19† 79-10† 79-18† †† 79-36† 80-13† ††
80-79† 81-98† 81-99† 82-26† 82-66†† 82-79†
83-61† 83-62† 83-74†

Schedule

Recoupment of Grant Funds
76-02† 78-06† 79-12† 79-18† †† 80-01† 80-13† ††
80-28† 80-97† 81-03† 81-45†† 81-56 81-75†
81-79†† 81-92† 81-98† 82-18†† 82-28††† 82-53†
82-125††† 83-106† ††

Suspension
80-03†

Termination
76-02† 81-114†† 82-118† 83-76††

Withholding of Grant Funds
80-83†† 80-104††

Grant Related Income

Generally
81-68†† 82-106†

Interest on Grant Funds

Earned

79-18† †† 80-13† †† 80-50†† 80-57†† 80-58†† 80-71††
80-83†† 81-37† 81-52†† 81-58†† 82-06† 82-53†
82-133† †† 83-124†

Imputed

79-18† †† 80-13† †† 81-86†† 81-102†† 81-106†

Grant Types

Advance Payment

80-50†† 81-37† 82-06† 82-133† ††

Reimbursement

80-50†† 81-37† 82-06† 82-44† 82-133† ††

Grantee's Management Responsibilities

Financial Management

81-16† 81-114†† 82-80†

Project Management

79-10† 79-36† 79-38†† 80-52† 80-54† 80-80†
80-109† 81-02† 81-33††† 81-115†† 82-05 82-17†
82-23† 82-131† 83-09†† 83-19† 83-33† 83-39†
83-66†† 83-106† †† 83-112† 83-113†

Grantor's Responsibilities

81-69† 81-78† 82-03†

Subagreements

Change Orders

75-37† 79-18† †† 79-36† 80-07† 80-14†† 80-19††
80-26†† 80-40†† 80-75†† 80-83†† 80-94†† 80-101†
81-21† 81-33††† 81-35† 81-39†† 81-71† 81-86††
81-98† 81-107† 82-03† 82-16†† 82-36†† 82-45††
82-53† 82-60† 82-103†† 82-105† 83-09†† 83-12†
83-21† 83-39† 83-52† 83-59† 83-60† 83-91†
83-108† 83-110† 83-130

Compensation
79-18† †† 79-43† †† 80-01† 80-13† †† 80-39† †† 80-52†
80-54† 80-80† 81-21† 81-36† 81-62††† 81-77†
81-97† 81-98† 81-106† 82-90†† 82-96† 83-11†
83-33† 83-59† 83-67† 83-89† 83-122†

Contract Clauses

Escalation Clause
82-60†

Generally
76-15† 80-23† 81-97† 83-06†

Contractor's Failure to Perform
80-54† 81-23† 81-89† 82-131† 83-09†† 83-45†
83-60† 83-67† 83-74† 83-134†

Cost and Pricing Data
79-15† 80-52† 80-81† 83-138†

Generally
80-17†† 80-23† 80-81† 81-08†† 81-22†

Interest on Fees Paid
80-54†

Minority and Women's Business Enterprise Requirements
81-96† 82-03†

Procurement

Formally Advertised
75-37† 82-03† 82-19† 82-106† 83-106† ††

Negotiated
75-37† 82-03†

Types

Cost Plus

Fixed Fee
81-22† 81-21† 81-23† 81-49† 82-20†

Multiplier
79-43† †† 80-52† 81-21†

Percentage of Construction Cost

79-18† ††	79-43† ††	79-47†	80-39† ††	80-52†
80-85†	81-16†	81-22†	81-97†	81-98†
81-112†	82-96†	82-106†	82-112†	83-11†
83-33†	83-39†	83-41†	83-58†	83-59†
83-67†	83-72†	83-78†	83-108†	83-127†

Percentage of Cost

80-13† ††	80-16††	80-34††	80-55††	80-68††
80-71††	80-85†			

Fixed Price

80-30††	80-39† ††	80-52†	81-49†	81-69†	81-77† •
81-117†	82-65†	83-46†	83-106† ††	83-122†	

Uniform Relocation and Real Property Act
77-20†